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File No. O. Dist Pol. 44

A **BRANCH**

Subject:—

Opinions under the Bombay District Police Act, 1890

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File No. O Dist. Pol. 144.

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C O N T E N T S.

Legal Department File O. Dist.Pol. 1944

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5 Copies.

NCB/247

PHB/247

Submitted.

2 The R.A.F.Authorities at Santa Cruz report that cattle and dogs from the surroundi g places whichare nor requisitioned stray on concrete runways and cause obstruction to the runways and are a source of danger to flying personnel. The Dist.Supdt of Police, B.S.D., therefore suggested the following two method to meet with the situation:-

(1) to establish a cattle pound under section 4 of the cattl trespass Act, 1871;

(2) to make section 61A of the Bombay District Police Act applicable to the area in which the Santa Cruz Aerodrom is situated.

3 The Dist. Registrate, B.S.D. has already asked the Bandra Municipality to establish a cattle pound in the village Kalina and to appoint a pound-keeper. The question for the consideration of the R.L.A. is whether section 61A of the Bombay District Police Act, 1890 can be applied to the area in which Aerodrome is situated.

4 The applicability of section 61A of the Bombay Dist.Police Act 1890 is limited by the circumstances mentioned in the section, i.e. the cattle are habitually allowed to stray and that such cattle trespass on land anddamage crops or other produce thereon. This circumstances is absent in the present case. Secondly the section makes it obligatory on the owners to keep these cattle in confinement between one hour after sunset and sunrise-i.e. only during the night. Consequently the power of seizure of cattle cannot be exercised during day-time. The application of section 61A is thus of a very limited use and even that limited application of the section is not justified in this case.

5 If the answer is in the negative, the R.L.A. is also requested to advise how the object in view could be achieved. It is stated in the Dist.Supdt.of Police,B.S.D.'s report (page 7)that the Aerodrome is a protected place under rule 7 of the Defence of India Rules. There are two other provisions in the Defence of India Rules (namely rules 12 and 80) which authorise Government to exercise certain powers in respect of land. Rule 12 is very

wide and authorise Government to prohibit the passage of any person, animal or vehicle over any land. This rule is found at the end of Part II which bears the heading "Access to certain premises and areas" but under what contingency the rule is to be applied is not made clear in the rule. Rule 80 is intended to be applied where the land owned by a person is intended to be used for naval, military or air force purposes and would not apply to Government land. The attention of H.D. may therefore be drawn to rule 12 of the Defence of India Rules and that Department may be advised to consider the advisability of applying that rule for preventing the nuisance complained of by the R.A.F. Authorities, in consultation with the Govt. of India (Please See R.L.A.'s opinion No. 166 Cmnfl. dated 1.4.41 and the copy of the Government of India letter referred to therein).

Sd./V.J.Pathare 2/3

S.A.S.

Section 61A of the Bombay District Police Act, 1890 has apparently no application to the present case since no damage to the crop or other produce is involved. Even rule 12(1) of the Defence of India Rules which no doubt is very wide does not appear to have any application since the passage of a dog over the prohibted area can be prohibited or restricted under that rule but not its trespassing of rule 12(1) is suitably amended, an order prohibiting trespass of an animal on the prohibited area would be legally feasible (section 290 I.P.C. may not apply).

Id./R.T.K. 15/3

A.L.R.

Please examine Rule 49(1) of the D. of I. Rules. Action under that section could be justified on the ground of "facilitating operations of H.M.'s Forces".

Id./.R.S.H. 16/3

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Section 61A of the Bombay District Police Act, 1890 will it seems have no application to the present case. There are no crops or other produce on the aerodrome for the cattle to damage. Further, that section empowers the confining of cattle only between one hour before sunset and sunrise. Rule 12(1) of the Defence of India Rules empowers the prohibition of the passage of cattle but does not seem suitable for dealing with trespassing cattle. If the problem is only one of removing cattle from the runways to the pound then sections 10 and 11 of the Cattle traspass Act, 1871 seem a sufficient solution. If the cattle cause damage to the runways or other property on the aerodrome then the occupiers of the aerodrome i.e. the Aerodrome authorities, may seize the cattle and send them to the pound. If the cattle do no damage but merely stray, then recourse may be had to section 11. That section provides that persons charge of public roads, pleasure-grounds, plantations, canals, drainage works, embankments and the like may seize or cause to be seized any cattle straying thereon. The suggestion invloves holding that the words "and the like" include an aerodrome. I am doubtful of that, but there seems no harm in the circumstances in acting on that assumption until a Court decides otherwise.

Id./P.N.M.

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U.R. to H.D., No. 2601, dated the 5th April 1944.

SMR 11-7-56
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L.D.R.I.No. 6362/21.7.1944.

Submitted:

2 Please see the G.D.notes at p. 15-17 ante. It appears that applications for permission to remove corpses from one place to another are at present received by the District Magistrates and that the required permissions are also given by them. The Collector of Poona feels doubtful as to whether the issue of such permits by the D.M.s is legal under section 39(1)(h) of the Bombay District Police Act, 1890. The Commissioner,C.D., also concurs with the Collector of Poona. The G.D. has thereupon requested R.L.A. to advise as to whether the view taken by the Collector of Poona and endorsed by the Commissioner, C.D. that it is doubtful whether under section 39(1)(h), the D.M. is authorised to regularise the transport of corpses from one place to another is correct and if so whether it would be necessary to amend the Bombay District Police Act s as th regularise the present procedure followed by the D.Ms. in issuing the permits for the transport of corpses from one place to another.

3 Section 39(1)(h) of the Bombay District Police Act, 1890 authorises the D.Ms. to make rules or orders prohibiting the exposure or movement in any street of persons or animals suffering from contagious or infectious diseases and the carcasses of animals and the corpses of persons deceased. Under this clause the D.Ms. are empowered to regulate the exposure or movement of the corpses in any street in any town or place. This clause will thus perhaps not cover the transport of corpses from one city to another. It will therefore be perhaps necessary to provide for requisite authority empowering D.Ms. to issue permits for the transfer of corpses from one place to another by a suitable amendment in the Bombay District Police Act. However, Government h issued orders under G.R.Ecclesiastical Department No. dated the 3rd January 1934 authorising the D.Ms. to orders regarding the exhumation of remains

deceased persons for reinterment , in another cemetry in any place in the Bombay Province. Before any definite opinion is given on the points raise by G.D. that Department may perhaps be requested to forward the file containing the said G.R.E.D.No. 862 dated 3rd January 1934 referred to in that Dept. notes at pp. 15-17 ante.

Id./ S.A.V. 2/8

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Section 39(1)(h) of the Bombay District Police Act 1890, does not authorise the issue of permits for the transport of dead bodies from one place to another.

Id./..... 18/8/44
Remembrancer of Legal Affairs.

U.R. to G.D.No. 5865, dated the 21st August 1944.

SMR 11-7-56
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Section 243 of the Government of India Act, 1935, provides that notwithstanding anything contained in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be determined by or under Acts relating to those forces respectively. The expression "subordinate ranks" means members of the police force below the rank of Deputy Supdt.(see section 3(i)of the Bombay District Police Act, 1890). Chapter III of the Bombay District Police Act, deals with regulation, control and discipline of the police force. Under section 29(3) in that chapter the power to punish any member of the subordinate ranks of the police force vests in the Inspector General of Police, Deputy Inspector General and Superintendent; and the exercise of any power thus conferred shall be subject always to such rules and orders as may be made by the Provincial Government in that behalf. Section 30 provides that when an officer passes an order for fining, suspending, reducing or dismissing a police officer, he shallrecord such order or cause the same to be recorded together with the reasons suchorder or cause the same to be recored together with the reasons therefor and a note of the inquiry made in writing under his signature in the language of the district or the English. Part II in Chapter XXXVI of Police Manual contains rules made by Government relating to appeals and petitions for revision. Rule 1298(5) in Part II of that Chapter provides that on every petition of appeal the appellate authority after examining the proceedings may either annual, reverse, modify or confirm the order passed by the Superintendent of Police or may require such further inquiry as he may think necessary to be made by the Superintendent. The rules do not prescribe any manner of recording the order by the appellate authority. All that is necessary is that the proceedings must be examined before annulling, reversing, modifying or confirming the order of punishment. In the present case that provision has been duly complied withbefore confirming the order

of dismissal; and that order of Government has been duly communicated to the party under the signature of Deputy Secretary, H.D.(see rule 13of the [redacted] Rules of Business made under section 59 of the Government of India Act, 1935). Consequently there is no flaw in the procedure followed by Government. The party may be informed that the order communicated to him is the order passed by Government after due consideration and consequently the question of supplying a copy of the order does not arise.

Id./P.N.M. 30/8

Remembrancer of Legal Affairs.

U.R. to H.D.,No. 6147, dated the 1st September 1944.

SMR 11-7-56
4 Copies.

In Bhagchand vs. Secretary of State, 51 Bom. 725, Viscount Sumner observed at p. 732 as follows:-

"In regard to each section (i.e. section 25 and section 25A of the Bombay District Police Act, 1890) it is to be noticed that the determination of the incidence of the tax in question is an executive and not a judicial act. It is a function of the Government in the one case and of the District Magistrate in the other; but in both cases its character is the same. Whatever may be said of the inquiry under section 25A(1)(a) into claims to be compensated for the damages sustained, the Magistrate's action under section 25A(1)(b) is not a judicial proceeding and there is nothing in the Act which requires that action in the matter should be taken wholly on his own initiative or without instructions or recommendations from his superiors (Cf. Ezra vs. Secretary of State 30 Cal.36 at pp. 83-85). Even the Commissioner's sanction is only stated to be previous; it is not required to be given once for all. Nothing prevents it from being given from time totime or after consultation nor is there anything about it which confines it to starting the Magistrate on a course of action which he is thereafter to pursue independently and alone. There is further more nothing in either section to restrict the exercise of this taxing function to one occasion and one only. The powers which they give are not spent by a Single exercise. The finality referred to in section 25A(4) relates exclusively to the Commissioner's function of review. The directions of the District Magistrate are not capable of being challenged otherwise than is hereby provided, but it is quite a different thing to say that the giving of one direction exhausts all the Magistrate's powers and leaves him thereafter incapable of any substituted or amending action. Such a provision would be appropriate only to the judgment of a Court and not to administra-

-tive action such as this. Such a construction would tend to deprive the enactment of its practical utility".

3 In the present case the District Magistrate, Ahmedabad issued under section 25A(1) of the Bombay District Police Act, 1890, an order on 14th November 1941 directing the Municipality of Ahmedabad to recover an amount of Rs, 17,38,822 by imposing and levying a rate equal to 1½ times the actual demand of the municipal general water rate for the year 1941-1942 from each person liable to pay such water rate and the Commissioner directed under sub-section (2) of section 25A that the Government of Bombay and the Central Government should be exempted from the liabilitty to pay any portion of the aforesaid compensation. On 14th May 1942, the District Magistrate, Ahmedabad, revised his previous order and directed that the Municipality should recover Rs. 18,94,742/- in the same manner as previously ordered. Reading these two orders together, it is apparent that the property which was owned by the B.B.& C.I. Railway in 1941-1942 would be liable to be assessed to the riot tax inasmuch as it was not than Crwon property. But as observed by Viscount Sumner in Bhagchand vs. ecretary of State there is nothing to prevent the Commissioner from passing an order even at this stage under sub-section (2) of section 25A exempting the property of the B.B.& C.I. Railway from the riot tax. Consequently if Government proposes to give exemption to the property of the B.B.' C.I. Railway which isnow crown property, the Commissai ner, N.D. may be requested to pass anorder under sub-section (2) 25A of the Bombay Police Act directing that the property owned by the B.B.& C.I. Railway in 1941-42 should be exempted from the riot tax.

Id./ P.N.M. 12/10

Remembrancerof Legal Affairs.

U.R. to H.D.No. 7199, dated the 19th October 1944.